THE HON'BLE Mr. JUSTICE N.V. RAMANA

Writ Petition No.28285 of 1996

Dated: December 12, 2005

Between:

D. Venkata Rao, S/o. Venkateswarlu,

Aged 36 years,

R/o. Udayagiri, Nellore District.

… Petitioner

And

The Regional Manager, APSRTC, Nellore Region,

Nellore, Nellore District, and two others.

… Respondents

Order:

Petitioner seeks Mandamus declaring the order of Respondent No.1 in Proceeding No.St/19(133)/95-RM (NLR) dated 13-06-1996 insofar as imposing the punishment of postponement of increment for a period of two years and treating the period from the date of removal till reporting for duty on reinstatement as 'not on duty' for all purposes, as illegal and without jurisdiction.

2. Petitioner, a conductor appointed in the year 1987, while working at Kavali Depot, was issued a charge sheet by Respondent No.3 with the following charges. -

> "Charge No.1: For having failed to attend to your scheduled duties and absented unauthorized for the period from 20-12-93 to 25-2-94 and stayed away without prior permission or sanctioned leave which constitutes mis-conduct under Reg.28 (XXVIi) of APSRTC Employees' (Conduct) Reg. 1963.
>
> Charge No.2: For having submitted sick certificate from a doctor other than notified Doctor of APSRTC which constitutes mis-conduct under Reg.28 (XXXil) of APSRTC Employees' (Conduct) Regs.1963.
>
> Chare No.3: For your irregular attendance and habituated absenteeism and frequent sick reporting which constitutes mis-conduct under Reg.28 (XXXil) of APSRTC Employees (Conduct) Regs.1963."

3. It is the case of the petitioner that he submitted his explanation stating that due to viral fever, he could not attend for duty and he also submitted a sick certificate issued by the authorized doctor. Respondent No.3, by his order dated 02-09-1994, after going through the enquiry report and other evidence on record, removed the petitioner from service stating that the charges leveled against the petitioner are proved beyond reasonable doubt. Aggrieved thereby, the petitioner carried the matter in appeal before Respondent No.2, who rejected the same by his order dated 28-06-1996, stating that the appeal is
time-barred. Thereafter, the petitioner filed a review petition challenging the order of Respondent No.2 before Respondent No.1, who by his order dated 13-06-1996, while reinstating the petitioner into service, ordered that his annual increment be deferred for a period of two years without having effect on his future increments. It was observed that the intervening period from the date of his removal till the date of his reporting for duty on reinstatement should be treated as 'not on duty' for all purposes. It is that order which is challenged in this writ petition.

4. Learned counsel for the petitioner contends that the period of absence cannot be treated as 'not on duty', and in fact the petitioner had produced a doctor's certificate that he is sick. Hence, the impugned order cannot be sustained. He, thus, prayed to allow the writ petition.

5. Respondents filed counter affidavit denying the allegations and submitted that while the petitioner was working at Kavali Depot, he, several times, reported sick

and availed ‘off’ number of times. On
17-12-1993, the petitioner fell ill and remained absent on 18-12-1993 and 19-12-1993 and submitted a sick intimation. Thereafter, he again remained absent from 20-12-1993 to 25-02-1994, for which the petitioner produced a sick certificate issued by a doctor by name one Sri D.V. Swamy, who is not an authorized doctor of RTC clinic. Hence, the said sick certificate was not considered and a charge sheet was issued framing the aforementioned three charges. The petitioner, having received the charge sheet, failed to submit his explanation. He gave an undertaking that he would not repeat the instance of unauthorized absence, but he again remained absent from 21-07-1994 to 24-08-1994, for about a month. Therefore, a domestic enquiry was ordered in the matter and a letter was issued to the petitioner asking him to attend enquiry, but the letter returned un-served with an endorsement that the address of the petitioner was not available and therefore the enquiry notice was exhibited on the notice board on 25-07-1994, but, the petitioner failed to turn up to attend the enquiry, which was conducted *ex parte* and a report was submitted by the enquiry officer. It is stated that though the petitioner failed in his attempt twice, the reviewing authority, on humanitarian grounds, ordered his reinstatement and modified the punishment of removal and imposed punishment of deferment of increment for 2 years without having effect on future increments and also the period from the date of removal to the date of reinstatement shall be treated as ‘not on duty’ for all purposes and the same cannot be found fault with.

6. It is clear from the enquiry report as well as the removal order that the petitioner is a chronic absentee and his conduct while in service shows that he remained unauthorizedly absent from duties several times. Moreover, the sick certificate submitted by the petitioner was also not issued by a Doctor of the APSRTC, but issued by a private Doctor. Apart from these aspects, the petitioner also failed to participate in the enquiry, which shows that he is not interested in prosecuting his case. Hence, the contention of the learned counsel for the petitioner that the period of the petitioner’s absence cannot be treated as ‘not on duty’ cannot be sustained. The reviewing authority, on humanitarian grounds, reinstated the petitioner into service, deferring two increments without having effect on future increments and also the period from the date of removal to the date of reinstatement shall be treated as ‘not on duty’ for all purposes, and no exception can be taken thereto, more so having regard to the judgment of the apex Court in **Regional Manager, Rajasthan SRTC v. Sohan Lal**, wherein it was held that it is not within the normal jurisdiction of the superior courts to interfere with the quantum of sentence imposed by the disciplinary authority, unless it is shown that the sentence imposed is wholly disproportionate to the misconduct proved. The petitioner has not made out any ground to show that the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct.

7. The writ petition is devoid of merit and is accordingly dismissed. No costs.

N.V. RAMANA, J.

December 12, 2005

MRR